Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of	
APPLICATION OF NEW YORK TELEPHONE COMPANY (D/B/A BELL ATLANTIC - NEW YORK), BELL ATLANTIC COMMUNICATIONS, INC., NYNEX LONG DISTANCE COMPANY, AND BELL ATLANTIC GLOBAL NETWORKS, INC. FOR AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN NEW YORK	CC Docket No. 99-295

OPPOSITION
OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

The Telecommunications Resellers Association ("TRA"), a national trade association representing more than 800 entities engaged in, or providing products and services in support of, telecommunications resale, hereby respectfully urges the Commission to deny the Application of New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. (collectively "Bell Atlantic") for authority to provide interLATA service "originating" within the Bell Atlantic "in-region State" of New York. TRA acknowledges that Bell Atlantic fares far better under most competitive measurements than the other remaining Bell Operating Companies, but while full checklist compliance may be within sight, Bell Atlantic has not yet achieved this goal.

While it has admittedly made great strides in opening its New York local markets to competition, Bell Atlantic still does not provide TRA's local carrier members with access to operations support systems equivalent to that it provides itself. Moreover, Bell Atlantic unlawfully restricts the availability and use of unbundled network element combinations and enhanced extended links, and fails to provide requisite collocation opportunities. And Bell Atlantic continues to block meaningful access by TRA's local carrier members to customers, both by enforcement of draconian termination penalties and denial of wholesale discounts. Until these matters have been fully addressed, grant to Bell Atlantic of the requested in-region, interLATA would be premature.

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OPPOSITION OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"),[1] through undersigned counsel and pursuant to Public Notice, DA 99-2014 (released September 29, 1999), hereby opposes the application ("Application") filed by New York Telephone Company (d/b/a Bell Atlantic - New York) ("Bell Atlantic - New York"), Bell Atlantic Communications, Inc. ("Bell Atlantic Communications"), NYNEX Long Distance Company ("NYNEX Long Distance"), and Bell Atlantic Global Networks, Inc. ("Bell Atlantic Global") (collectively "Bell Atlantic") under Section 271(d) of the Communications Act of 1934 ("Communications Act"),[2] as amended by Section 151 of the

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[1] A national trade association, TRA represents more than 800 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services.

[2] 47 U.S.C. § 271(d).

Telecommunications Act of 1996 ("Telecommunications Act"),[3] for authority to provide interLATA service "originating" within the Bell Atlantic's "in-region State" of New York.[4] TRA acknowledges that Bell Atlantic fares far better under most competitive measurements than the other remaining Bell Operating Companies ("BOCs"), having made substantial progress in opening its local markets in the State of New York to competition.[5] But while full checklist compliance is certainly within sight, Bell Atlantic has not yet achieved this goal. And until such time as it does and the requisite public interest determinations can be made, grant of Bell Atlantic's request for in-region, interLATA authority in the State of New York would be premature.

I.

INTRODUCTION

TRA is the largest association of competitive carriers in the United States, numbering among its more than 800 members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers, as well. Over 45 percent of TRA's carrier members currently provide local service as part of their

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[3] Pub. L. No. 104-104, 110 Stat. 56, § 151 (1996).

[4] An "in-region State" is "a State in which a Bell operating company or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on the day before the date of enactment of the Telecommunications Act of 1996." 47 U.S.C. § 271(i)(1).

[5] For example, Bell Atlantic, alone among the major incumbent local exchange carriers, makes xDSL-based advanced services available at wholesale rates for resale pursuant to Section 251(c)(4) of the Communications Act, 47 C.F.R. § 251(c)(4). And, Bell Atlantic was the first among the major incumbent local exchange carriers to offer additional wholesale discounts to resale carriers willing to enter into term and volume arrangements. TRA submits that Bell Atlantic is to be commended for these pro-competitive actions.

product and service portfolios, while another 12 percent and 8 percent anticipate entry into the local market within the next 6 and 12 months, respectively.[6] By 1998, TRA's carrier members were already providing local exchange service in 46 of the 50 States, with New York having one of the highest concentrations of TRA carrier members active in the local market. TRA's local carrier members also utilize the network services of every major incumbent local exchange carrier ("LEC").[7]

TRA's local carrier members serve primarily small business and residential customers, with the latter market segment representing more than 20 percent of total customers.[8] While nearly 40 percent of TRA's local carrier members utilize unbundled network elements ("UNEs") to serve at least some of their local customers, the remainder rely exclusively on full service resale.[9] As a result, in excess of 60 percent of TRA's local carrier members currently report net margins of 0 percent or less on their local service operations.[10] As TRA recently demonstrated in a study submitted to the Commission in CC Docket No. 96-98, local resale is not a viable long

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[6] Telecommunications Resellers Association, "1999 Reseller Membership Survey and Statistics" at 1, 13 ("TRA 1999 Membership Survey").

[7] Telecommunications Resellers Association, "Member Survey of Local Competition," p. 2 (April, 1998) ("TRA Local Competition Survey"); Remarks by the Telecommunications Resellers Association on the Implementation of the Telecommunications Act of 1996, p. A-2, submitted to the House Committee on Commerce on December 1, 1998 ("TRA Congressional Report").

[8] TRA Congressional Report at A-4.

[9] Id. at A-1. Among the major incumbent LECs, Bell Atlantic - New York evidences the highest percentage of TRA resale carrier members utilizing UNEs. TRA Local Competition Survey at 7.

[10] Id. at A-8.

term business strategy;[11] rather, as the Commission has recognized,[12] resale is a market entry vehicle, particularly for smaller carriers, for which combinations of UNEs must be substituted to allow for profitable operation. Thus, for example, TRA showed that in the State of New York, using evenly-applied business assumptions over a five year period, a carrier using resale would exhibit a negative EBIDTA in the range of 15 percent, while the same carrier making use of the UNE platform would achieve a positive EBIDTA in excess of 40 percent.[13] TRA also demonstrated that a wholesale discount of nearly 40 percent would be required in New York to allow a stand-alone local resale operation simply to break even.[14]

In short, TRA's carrier members have been, and if provided a fair opportunity to do so, will continue to be, active participants in the New York local telephone market, serving residential, as well as small business, users. Critical to their ability to do so, however, is full checklist compliance by Bell Atlantic, including, among other things, unlimited availability and use of UNE combinations or, where local switching is not offered on an unbundled basis, unrestricted availability and use of enhanced extended loops ("EELs"), as well as affordable, dependable collocation opportunities. Equally critical are fully viable operations support systems ("OSS") which

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[11] Letter to Jake E. Jennings from David Gusky, Executive Vice President of the Telecommunications Association, submitted in CC Docket No. 96-98 on September 8, 1999 ("Gusky Letter").

[12] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 12 (1996), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19738 (1996), *further recon.*, 12 FCC Rec. 12460 (1997), *aff'd/vacated in part sub. nom.* Iowa Util. Bd v. FCC, 120 F.3d 753 (1997), *writ of mandamus issued* 135 F.3d 535 (8th Cir. 1998), *aff'd/vacated in part sub. nom.* AT&T Corp., et al. v. Iowa Utilities Board, 119 S.Ct. 721 (1999).

[13] Gusky Letter at Appendix A.

[14] Id. at Appendix B.

allow TRA's resale carrier members to provide service at parity with Bell Atlantic. And TRA's resale carrier members must be afforded fair access to all customers.

While Bell Atlantic has admittedly made great strides in opening its New York local markets to competition, it has not achieved full checklist compliance nor provided TRA's local carrier members with OSS access equivalent to that which it provides itself. Moreover, Bell Atlantic unlawfully restricts the availability and use of unbundled network element combinations and enhanced extended links, and fails to provide requisite collocation opportunities. And Bell Atlantic continues to block meaningful access by TRA's local carrier members to customers, both by enforcement of draconian termination penalties and denial of wholesale discounts. Until these matters have been fully addressed, grant to Bell Atlantic of the requested in-region, interLATA would be premature.

Premature grant of in-region, interLATA authority would jeopardize all that has thus far been achieved in the New York local markets. As the Commission has recognized, "Section 271 . . . creates a critically important incentive for BOCs to cooperate in introducing competition in their historically monopolized local telecommunications markets."[15] "[I]ncumbent LECs have no economic incentive, *independent of the incentives set forth in sections 271 and 274 of the 1996 Act,* to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services."[16] As couched by Chairman Kennard:

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[15] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543, ¶ 14 (1997).

[16] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 55 (emphasis added).

> If a Bell Company can offer long distance service before it has opened its local market to competition as set forth in Section 271, then the Bell Company will continue to dominate the local service market, and also could dominate the market for bundled services. That will harm competition and harm consumers, because consumers will continue to be denied a choice of providers for local service.
>
> Permitting Bell Company entry into the interLATA interexchange market before the local market has been opened to competition is also likely to result in more mega mergers and consolidation rather than competition. If the local market is not open, long distance companies will have no alternative but to merge with a local service provider in order to repond to consumer demand for "one-stop shopping." And that's why under the Act, Congress wisely required the Bell Companies to open their local markets to competition before they may be authorized to provide long distance services.
>
> Thus, we must focus on the most fundamental goal of the Act, each integral to the other: opening all markets, especially local telecommunications markets, ensuring free consumer choice of every kind, and lowering all barriers to entry in the name of competition. Once these goals are fully realized through the mechanisms of the Act, the deregulation of telephone markets in favor of market forces is possible and desirable. This is the vision of Congress and the end to which every action of the FCC is and shall be directed.[17]

Thus, whatever market-opening thresholds have not been reached when in-region, interLATA authority is granted likely will not be achieved once the incentives built into Section 271 no longer exist. As the Commission has recognized, "[p]remature entry would reduce the BOCs' incentives to open their local markets, . . . with the obvious result . . . [being] less local competition

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[17] Statement of William E. Kennard, Chairman, Federal Communications Commission, on Section 271 of the Telecommunications Act of 1996 before the Subcommittee on Communications of the Committee on Commerce, Science, and Transportation of the United States Senate on March 25, 1998.

. . . [and] [t]he perhaps less obvious, but equally serious, result . . . [being] less long distance competition."[18]

It is undoubtedly for this reason that Congress precluded approval of BOC applications for in-region, interLATA authority unless and until the Commission finds, among other things, that "the petitioning Bell operating company has . . . fully implemented the competitive checklist in subsection (c)(2)(B)."[19] As the Commission has correctly concluded, a BOC's failure to satisfy even "an individual item of the competitive checklist constitutes independent grounds for denying . . . [an] application."[20] Congress also identified as prerequisites for grant of a BOC application for in-region, interLATA authority Commission determinations that "the requested authorization will be carried out in accordance with the requirements of section 272" and that "the requested authorization is consistent with the public interest, convenience and necessity."[21] With respect to the latter criterion, the Commission has recognized that the public interest requirement is "a separate, independent requirement for entry," which requires a careful examination of "a number of factors, including the nature and extent of competition in the applicant's local market, in order to determine whether that market is and will remain open to competition."[22]

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[18] AT&T Corporation, *et al.*, v. Ameritech Corporation, 13 FCC Rcd. 21438, ¶ 7 (1998).

[19] 47 U.S.C. 271(d)(3)(A)(i).

[20] Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order),13 FCC Rcd. 20599, ¶ 50 (1998).

[21] 47 U.S.C. 271(d)(3)(B), (C).

[22] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543 at ¶ 402.

II.

ARGUMENT

A. The KPMG Final Report Reveals Significant Flaws in Bell Atlantic's OSS Systems and Procedures

In its Brief in Support of its Application, Bell Atlantic notes that "KPMG, an independent third party, exhaustively tested Bell Atlantic's systems and processes on a scale 'much broader than [is] likely to be experienced by any CLEC'," noting that "[t]he KPMG test . . . evaluated 855 separate items relating to pre-ordering, ordering, provisioning, maintenance and repair, billing, and relationship management and infrastructure."[23] According to Bell Atlantic, it "passed this test with flying colors, satisfying 850 out of 855 of the test elements."[24] TRA submits that Bell Atlantic overstates its case by a substantial margin.

First, while Bell Atlantic is correct that the KPMG test was "conducted under the New York PSC's auspices," that fact alone does not render the analysis necessarily reliable.[25] As KPMG, L.L.P., ("KPMG") describes its efforts, it attempted to "live the CLEC experience" by "establish[ing] a pseudo-CLEC, and . . . build[ing] and submit[ting] both pre-order and order transactions using BA-NY's electronic interfaces -- much like a real CLEC would do."[26] But as KPMG candidly admits, "it was virtually impossible for the KPMG/HP test to be truly blind to BA-

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[23] Brief in Support at 9 - 10.

[24] Id. at 10.

[25] Id. at 9.

[26] KMPG, Bell Atlantic OSS Evaluation Project, Final Report, II3 (August 6, 1999) ("KMPG Final Report"). The KMPG Final Report is attached to the Application at Appendix C, Tab 916.

NY."[27] And despite its efforts "to partially offset this lack of blindness," KPMG acknowledges that it "received better treatment than a normal CLEC," citing by way of illustration that "BA-NY resources assigned to handle many of . . . [KPMG's] problem escalations were very senior BA-NY resources."[28] As KPMG points out, "other CLECs do not always get the same level of resources on their problem escalations."[29] And, as if to emphasize this point, KPMG can only declare that Bell Atlantic "appears to be on th[e] path" to "[c]reating a wholesale business that focuses on wholesale customer satisfaction, not retail customer competition," an attribute KPMG advises is "essential to CLEC success in the marketplace."[30]

KPMG also describes its analysis as "test until you pass," reflecting a "military-style test philosophy."[31] Such an approach, while beneficial to the extent that it provided Bell Atlantic with both the opportunity and the incentive to cure defects in its systems, can nonetheless mask systemic problems. It also suggests that great care should be taken in evaluating test items which have not been fully satisfied. With respect to the latter, a "test until you pass" approach, with its attendant flexibility to correct problems within the test environment, suggests that no problem should remain unresolved. In light of the repeated opportunities provided to cure a system defect, the

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27 Id. at II5.

28 Id. at II8.

29 Id.

30 Id.

31 Id. at II4.

failure to do so suggests either that the problem is incurable or that the carrier does not intend to implement the necessary fix.

A military-style philosophy can mask systemic problems because it tests and retests individual items without evaluating the system as a whole at the conclusion of component testing. As KPMG describes its processes, a test is followed by a written "Exception describing the failed component and the potential impact on a CLEC," which, in turn, is followed by a Bell Atlantic fix, and a retest.[32] KMPG "continued to iterate through the cycle until closure was reached."[33] Notably absent from this process is a system-wide test following closure on all individual items.

The component parts of any complex system interrelate in myriad ways. Changes to one component can have significant, and unforeseen, impacts on other components. Hence, a formal end-to-end test is necessary to ensure that the system, rather than merely the individual systems components, perform as required. Ideally, such a final test should be a market trial with real carriers and real customers. It is for this, among other, reasons that TRA recommended to the New York Public Service Commission ("NYPSC") that it mandate a three-month "road test" similar to that required by the Texas Public Utilities Commission as part of its evaluation infrastructure.[34]

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[32] Id. at II5.

[33] Id. Inexplicably, "KPMG determined that certain areas would not be subjected to further retesting. In those cases, the results of the test left that area in a less than fully satisfied state." Id. at II5. Some of these "areas" were particularly surprising. For example, KPMG, having expressed shock that Bell Atlantic released EDI system interface software and documentation "in the condition we encountered" and having stated that "the quality of the subsequent releases still falls short of that required by a CLEC in a production environment," nonetheless performed only "limited testing" on "the new release process for two minor releases" and no testing on "major releases." Id. at II8.

[34] Brief of the Telecommunications Resellers Association submitted to the New York Public Service Commission in Case 97-C-0271 on August 17, 1999 ("TRA August 17 NYPSC Brief"). The TRA August 17 NYPSC Brief is attached to the Application at Appendix C, Tab 960.

These preliminary issues aside, KPMG identified over 160 of the 855 Bell Atlantic test elements that were either "not satisfied" or marked as "satisfied subject to qualification" -- *i.e.*, in need of improvement.[35] The critical area of pre-ordering, ordering and provisioning generated the vast majority of the "not satisfied," and over a third of the "subject to qualification," marks.[36] Maintenance and repair[37] and billing generated more than half of the remaining "subject to qualification" marks, with the last "not satisfied" grade impacting relationship management and infrastructure.[38] Some of these test items go to the heart of the Commission's analysis here. Thus, for example, KPMG, with respect to its analysis of Bell Atlantic's "metrics evaluation: pre-ordering, ordering and provisioning," noted:

> BA-NY did not meet the standard of parity set forth in the primary provisioning metrics and for many of the sub-metrics. Offer intervals and completion intervals for KPMG test orders are statistically significantly longer than offer and completion intervals for BA-NY retail orders. These differences exist and are statistically significant,

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[35] KMPG Final Report at II17 - II36.

[36] Among other things, KPMG faulted Bell Atlantic for not providing competitive providers with viable certification testing – *i.e.*, the process through which competitive providers determine whether their systems and procedures are compatible with Bell Atlantic's OSS before attempting to use Bell Atlantic OSS to serve their customers. Id. at IV3, IV17 - 19. This process is also relied upon by competitive providers to determine whether changes in Bell Atlantic's systems and procedures adversely impact pre-existing compatibility.

[37] For example, KPMG notes that "a key difference between BA-NY retail M&R processes and BA-NY M&R processes for UNE analog loop services . . . systematically causes CLEC customers to be served more poorly than BA-NY retail customers when a certain maintenance circumstance occurs" – *i.e.*, when "a dispatched technician determines that there is no fault in the BA-NY network at the dispatched location. Id. at V76 - 77. Inexplicably, KPMG assigned this problem a "satisfied with qualifications" mark.

[38] Failure by Bell Atlantic to provide timely, complete and accurate notice of alterations to its systems and processes – a matter for which the carrier was faulted by KMPG – hinders the ability of competitive providers to adequately serve their customers. Id. at VII3, VII7 - 10. As KPMG notes, "[t]he consistent, timely distribution of this documentation is essential to BA's wholesale customers' ability to prepare for impending changes." KMPG Exception Closure Report, ID 6, p. 3 (July 23, 1999).

> even after accounting for differences in type of order. The differences found in the test period using KPMG test CLEC data are consistent with the differences historically observed, between September 1998 and March 1999, between CLEC orders and BA-NY retail orders.[39]

Bell Atlantic opines that it should not be required to achieve perfection, citing as support for its contention an earlier Commission statement that "an absolute-perfection standard is not required by the terms of the competitive checklist."[40] But 160 plus "not satisfied" or "satisfied with qualification" marks does not approach perfection, especially when one considers that Bell Atlantic was afforded multiple opportunities by KPMG to cure identified problems. Moreover, the experience of TRA's resale carrier members and other competitive providers in New York confirm that perfection is not the issue here.

TRA's local carrier members, for example, have voiced persistent complaints with regard to the lack of account support received from Bell Atlantic. As TRA explained to the NYPSC, Bell Atlantic account managers act more often as gatekeepers, denying competitive providers necessary access to pertinent Bell Atlantic resources, than as problem solvers.[41] Bell Atlantic account mangers often do not possess sufficient service knowledge, experience or interest to be able to resolve problems, relying far too often on the tired refrain, "look it up in the manual." And,

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[39] Id. at IV202.

[40] Brief in Support at 9 *citing* Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543 at ¶ 278.

[41] TRA NYPSC Brief at 8 - 9.

compounding this problem, escalation procedures commonly prove to be unreliable when account managers are unresponsive.

Not surprisingly then, KPMG faulted Bell Atlantic's help desk procedures even though it admittedly received superior attention from Bell Atlantic personnel.[42] As detailed by KPMG:

> [I]nterviews with Test Manager HD personnel indicate that initial information provided by BA-NY HD personnel was often not sufficient to resolve the issue. Interviews indicate that the process of error resolution was often iterative, and required multiple phone calls to resolve one transaction issue.[43]
>
> Resolution of HD issues is not always provided in a timely manner. Analysis of calls placed to HD during the course of testing indicated more than 40% of all order transaction issues took longer than 2 business days to resolve. HD performance did improve during the course of testing. For orders, there was a significant decrease in the number of transaction issues requiring more than 11 business days to resolve . . . For pre-orders, over a third of transaction issues required more than 2 days to resolve. . . . CLECs are often obligated to place several calls to the HD/WCs to obtain resolution . . . Based on the results of this retest, this criterion is Satisfied with Qualifications.[44]
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> There is no uniformly established procedure for logging calls that get referred to managers, SMEs, or other Help Desks by the TISOC Centers.[45]

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[42] KMPG Final Report at II8 ("[O]n several occasions we believe that we received better treatment than a normal CLEC . . . For example, . . . [i]t would appear from our CLEC visits and observations that other CLECs do not always get the same level of resources on their problem escalations."

[43] Id. at IV245.

[44] Id. at IV245 - 246.

[45] Id. at IV247.

> There is no uniformly defined procedure for tracking the status of each call received by the TIOSC Centers, or for regularly reporting on issues that remain open.[46]
>
> Documentation does not clearly distinguish between the different Help Desks available to CLECs/Resellers and the types of problems each HD can address.[47]
>
> Frequently it is not clear which HD or support function should be called. For example, should EDI order issues be referred to the systems HD or to business rule support functions? As a result, calls must often be placed to multiple sources before resolution steps can be initiated.[48]

TRA's local carrier members' problems in dealing with Bell Atlantic's systems and procedures are not, however, limited to a lack of account support. The competitive efforts of TRA's local carrier members are also hindered by a lack of parity in service order provisioning and service maintenance. As TRA's local carrier members informed the NYPSC, intervals for service order provisioning are generally five business days for competitive providers, substantially longer than the three or fewer days in which Bell Atlantic provisions its retail customers. And as TRA's local carrier members related to the NYPSC, repair activity for their customers is often slowed by Bell Atlantic's persistent refusals to accept verbal trouble tickets, the need for which is occasioned by periodic Graphical User Interface ("GUI") malfunctions.

The experiences of TRA's local carrier members in this regard are borne out by monthly performance data reported by Bell Atlantic to the NYPSC. These "C2C" reports apply to

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[46] Id. at IV248.

[47] Id. at IV244.

[48] Id. at IV220 - 221.

Bell Atlantic's wholesale operations various carrier-to-carrier performance standards identified by the NYPSC as representing "a reasonable and achievable level of performance for Bell Atlantic - New York which will permit the competitors to enter the local exchange market."[49] Where the performance standard is parity, Bell Atlantic reports a "Z-score" which measures the statistical significance of the difference between the service Bell Atlantic provides itself and that it provides competitors; a "Z-score" of less than -1.645 indicates a 95 percent probability that Bell Atlantic is not providing service at parity.

"C2C" service performance data reported by Bell Atlantic in June revealed a stark failure to provide parity of service with respect to at least 34 percent, and possibly another 8 percent, of UNE metrics, including 31 percent of the measures identified as "critical"-- *e.g.*, timeliness of service order provisioning and service repair.[50] Bell Atlantic's resale operation fared somewhat better, failing to provide parity with respect to only 11 percent, and possibly another 9 percent, of resale metrics, although among this 11 percent were seven different measures of Bell Atlantic's ability to provision basic voice service within four business days.[51]

TRA's local carrier members also voiced their concerns to the NYPSC regarding inadequacies in Bell Atlantic's billing systems. A persistent problem are service orders which are

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[49] Order Adopting Inter-Carrier Service Quality Guidelines, Case 97-C-0139, p.2 (February 16, 1999); Order Establishing Permanent Rule, Case 97-C-0139 (June 30, 1999).

[50] Bell Atlantic's performance in this regard has deteriorated since the beginning of the year, suggesting that Bell Atlantic's systems are not capable of handling the increasing demands of competitive providers.

[51] For example, Bell Atlantic completed 66 percent of retail orders for less than five lines within one day, while doing so for only 36 percent of orders submitted by competitors.

provisioned, but not accounted for in Bell Atlantic's billing system, resulting in double billing of customers by Bell Atlantic and TRA's local carrier members. Inaccurate billing is another serious concern raised by TRA's local carrier members with the NYPSC, resulting in significant resource drains to identify errors, as well as to ensure proper crediting. It is KPMG's findings with respect to Bell Atlantic's billing performance that TRA's local carrier members find most disturbing. While KPMG does hand out over 50 "satisfied with qualifications" marks, it nonetheless finds Bell Atlantic's billing performance to be generally satisfactory.[52] Having dealt with Bell Atlantic's billing for several years now, TRA's local carrier members know that satisfactory is not the appropriate description, casting doubt on this and other KPMG findings.

As the Commission has recognized, "[a] competing carrier that lacks access to OSS that is equivalent to the OSS the incumbent LEC provides to itself 'will be severely disadvantaged, if not precluded altogether, from fairly competing' in the local exchange market."[53] "The systems, information, and personnel encompassed by OSS are vital to the use of unbundled network elements and the provision of resold services by competitive LECs."[54] For a BOC's deployment of OSS to be sufficient to satisfy the competitive checklist, systems and personnel adequate to provide sufficient access to each of the necessary OSS functions must have been deployed, the BOC must be "adequately assisting competing carriers to understand how to implement and use all of the OSS

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52 KMPG Final Report at III27 - 29.

53 Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order),13 FCC Rcd. 20599 at ¶ 80.

54 Id.

functions available to them," and the OSS functions that the BOC has deployed must be "operationally ready, as a practical matter."[55] In short, "a BOC must offer access to competing carriers that is equivalent to the access the BOC provides itself in the case of OSS functions that are analogous to OSS functions that a BOC provides to itself."[56]

Like, BellSouth Corporation ("BellSouth") before it, Bell Atlantic has made "significant progress toward meeting the statutory requirements."[57] But also like BellSouth, "major compliance problems still exist," particularly with respect to OSS functionality.[58] The answer is not to overlook these problems in a rush to judgment, but to confront and remedy them. At such time, and only at such time, should in-region, interLATA authority be awarded.

B. Restrictions Imposed by Bell Atlantic on the Availability of Network Element Combinations and Necessary Alternatives To Such Combinations Violate the Competitive Checklist

In its Brief in Support of its Application, Bell Atlantic announces that it will impose "common-sense limitations on the availability of the platform for certain highly competitive areas and services."[59] Specifically, Bell Atlantic will not allow competing carriers to obtain "the full platform" to provide "business services in New York City wire centers in which there are two or more competing carriers already collocated and tariffed to provide local service," and "highly

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55 Id. at ¶ 85.

56 Id. at ¶ 87.

57 Id. at ¶ 9.

58 Id. at ¶ 10.

59 Brief in Support at 25.

competitive services such as Centrex, PBX, and high-speed services including DS1 and ISDN PRI."[60] Likewise, Bell Atlantic imposes limits on use by competitive providers of EELs so as to ensure that such facilities are utilized primarily to transmit local exchange traffic.[61] And while Bell Atlantic asserts that it "provides a variety of alternative collocation arrangements, including smaller physical collocation cages, shared collocation cages, and cageless collocation arrangements," to facilitate use of EELs,[62] its collocation offerings fall short of that which is necessary to achieve checklist compliance.

The Commission has long recognized that "the ability of new entrants to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress's objective of promoting competition in the local telecommunications market."[63] The Commission has further correctly concluded that "limitations on access to combinations of unbundled network elements . . . seriously inhibit the ability of potential competitors to enter local telecommunications markets through the use of unbundled elements, and . . . therefore significantly impede the development of local exchange competition."[64] As the Commission has explained, "in practice, it would be impossible for new entrants that lack facilities

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60 Id. at 25, fn. 28.

61 Id. at 25.

62 Id. at 25 - 26.

63 Application of Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543 at ¶ 332.

64 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶¶ 10 - 23.

and information about the incumbent's network to combine unbundled elements from the incumbent's network without the assistance of the incumbent."[65]

Accordingly, the Commission requires incumbent LECs to make available to competitive providers any and all existing combinations of network elements for any and all purposes, except to the extent specifically relieved of this obligation in access density zone 1 of the 50 largest Metropolitan Statistical Areas for business users with four or more lines because non-discriminatory cost-based access to EELs is being provided.[66] The mandate underlying this requirement has been affirmed by the U.S. Supreme Court.[67] Thus, any additional restrictions Bell Atlantic imposes on the availability of combinations of network elements would conflict with lawful Commission directives and hence, would run afoul of the second checklist item. The geographic availability of such combinations, therefore, can be no narrower than that allowed by the Commission and no limitations can be imposed on the uses to which such combinations can be put beyond those expressly recognized by the Commission. Indeed, given that unbundled local switching was included by Congress in Section 271 as a discrete checklist item, TRA submits that Bell Atlantic must make combinations of network elements available even in geographic zones in

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[65] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (Third Order on Reconsideration), 12 FCC Rcd. 12460 (1997), *pet. for rev. pending sub. nom.*, Southwestern Bell Telephone Co. v. FCC, Case No. 97-3389 (Sept. 5, 1997).

[66] 47 C.F.R. § 51.315(b); "FCC Promotes Local Telecommunications Competition; Adopts Rules on Unbundling of Network Elements," Report No. CC 99-41 (released September 15, 1999).

[67] AT&T Corp., et al. v. Iowa Utilities Board, 119 S.Ct. 721 (1999).

which, and to serve customers for which, other incumbent LECs might be relieved of the Section 251(c)(3) obligation to provide unbundled local switching.[68]

To the extent, however, that Bell Atlantic is relieved of its obligation to provide unbundled local switching under the Commission's revamped list of network elements to which unbundled access must be provided, it is critical that EELs serve their intended purpose of essentially replicating platform capability utilizing local switching capability obtained from a source other than Bell Atlantic. To achieve this end, no additional restrictions can be imposed on the use of EELs, either with respect to the traffic such circuits may be used to transmit or the network facilities to which such circuits may be interconnected. Section 251(c)(3) allows competitive providers to utilize all network elements, including EELs, to provide, without limitation, any telecommunications service, and provides access to all network elements, including EELs, at any technically feasible point.[69] Indeed, Section 51.309(a) of the Commission's Rules expressly prohibits an incumbent LEC from "impos[ing] limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends."[70]

To the extent EELs can be said to provide a viable alternative for combinations of network elements inclusive of local switching, they can do so only to the extent that affordable, dependable collocation opportunities are available. The Commission has endeavored to ensure that

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68 47 U.S.C. § 271(c)(2)(B)(ii).

69 47 U.S.C. § 251(c)(3).

70 47 C.F.R. § 51.309(a).

such collocation opportunities exist by, for example, mandating the availability of such alternative collocation arrangements as shared cage and cageless collocation, by directing incumbent LECs to make collocation space available in single-bay increments, and minimizing cost and other burdens associated with collocation.[71] While Bell Atlantic asserts that it provides alternative collocation arrangements consistent with the Commission's directives, the record before the NYPSC suggests otherwise. Moreover, Bell Atlantic's collocation offering is facially deficient in critical respects.

With respect to the latter point, Bell Atlantic wrongfully requires a ten foot buffer between its equipment and that of competitive providers, thereby unnecessarily inflating the cost of collocation and contributing to premature central office space exhaustion, all in contravention of a Commission directive not to require competitors to "collocate in a room or isolated space separate from the incumbent's own equipment."[72] Bell Atlantic extends delivery intervals for alternative collocation arrangements an additional month beyond that provided for cage-based collocation arrangements, increasing the cost of the former in terms of opportunities lost. And Bell Atlantic burdens competitors which make use of cageless collocation arrangements with unnecessary security measures and costs, in contravention of Commission prohibitions on the imposition of "discriminatory security requirements that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment."[73]

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[71] Deployment of Wireline Services Offering Advanced Telecommunications Capability (First Report and Order), 14 FCC Rcd. 4761, ¶¶ 37 - 60 (1999), *recon. pending, petition for review filed* GTE Service Corp. v. FCC, Case No. 99-1176 (D.C.Cir. May 10, 1999).

[72] Id. at ¶ 42.

[73] Id. at ¶ 47.

As noted above, the record before the NYPSC contains extensive testimony regarding inadequacies in Bell Atlantic's collocation provisioning. Covad Communications Company ("Covad"), for example, detailed on the record the deficiencies that plagued 99 percent of the collocations with which Bell Atlantic had provided it.[74] As described by Covad, "CLECs are faced with the Hobson's choice of rejecting a cage and delaying turn-up of its network or accepting a poor quality cage in order to begin equipment installation."[75] Among the deficiencies experienced by Covad were:

- Cage: wrong placement, no access to cage, wrong ironwork, wrong size;
- Common area: no lighting, no lock on common area door, no common area key, no access card;
- No air conditioning installed;
- Cabling: no cabling, wrong cabling, insufficient cabling;
- Power: no power, insufficient power, no stencilling;
- Grounding: no grounding, incorrect grounding;
- Other Issues: new floor required due to asbestos removal, no environmental alarms, garbage in halls, excessive dust and debris left in space due to construction, water pipes in cage, window by radiator not sealed.[76]

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[74] Brief of Covad Communications Company (at 16 - 17) submitted to the New York Public Service Commission in Case 97-C-0271 on August 17, 1999 ("Covad August 17 NYPSC Brief"). The Covad August 17 NYPSC Brief is attached to the Application at Appendix C, Tab 949.

[75] Id. at 17.

[76] Id. at 17 - 18.

As TRA emphasized at the outset, local resale is not a viable long term business strategy. Accordingly, TRA's resale carrier members must transition to the UNE platform or the closest available alternative to remain competitive. To paraphrase the Commission, "it is critical that [TRA's resale carrier members] . . . have the ability to enter the local exchange market through the use of combinations of UNEs."[77] Restrictions or deficiencies which hinder use of these vehicles dampen local competition. Be it under the competitive checklist or the public interest standard, Bell Atlantic hence cannot be said to have met the requirements of Section 271 until it provides unfettered, workable use of network element combinations or designated alternatives.

C. Bell Atlantic Unlawfully Restricts Resale

In its Brief in Support of its Application, Bell Atlantic advises that "unlike prior applications, there is no issue here with respect to customer-specific arrangements ("CSA")," because it permits competitors to "resell any of Bell Atlantic's CSAs to any customer that meets the terms and conditions of that particular arrangement, and . . . [to] aggregate traffic from multiple customers to satisfy any volume requirements."[78] TRA commends Bell Atlantic for recognizing and honoring its statutory obligations in this key respect. Unfortunately, Bell Atlantic imposes other restrictions on resale which are equally injurious to competitors. First, as Bell Atlantic acknowledges, it subjects customers taking service under term contracts to termination liabilities in

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[77] Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 20599 at ¶ 141.

[78] Brief in Support at 36.

the event they desire to change local carriers.[79] Second, Bell Atlantic declines to treat volume and term offerings of xDSL-based advanced services as CSAs, refusing to make such offerings available at wholesale discounts pursuant to Section 251(c)(4).

TRA periodically surveys those of its members actively engaged in the provision of local exchange service, inquiring, among other things, as to the most significant impediments to local competition. "Termination penalties for contract assumptions" have been consistently cited by TRA's local carrier members as a significant impediment to their competitive efforts in the local market, following in importance only such bottom-line concerns as inadequate wholesale discounts and excessive unbundled network element ("UNE") prices, deficiencies in incumbent LEC operations support systems ("OSS"), lack of access to existing UNE combinations, and the unavailability, or the unavailability for resale at wholesale rates, of such critical service offerings as digital subscriber line ("DSL") services, voice mail, contract service arrangements ("CSAs") and inside wire installation and maintenance.[80]

Customers who otherwise would change local service providers are prevented from doing so by onerous termination penalties often associated with long-term service arrangements entered into before the passage of the Telecommunications Act, or before meaningful service alternatives became available. These service arrangements generally contain draconian "take-or-pay" provisions which provide for payment upon termination of all, or a significant percentage of

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[79] Id.

[80] TRA Local Competition Survey at 4 (April, 1998); Telecommunications Resellers Association, TRA Congressional Report at A-10.

all, charges that would have been paid during the entire term of the contract, generating penalties wholly unrelated to the incumbent LECs' unrecovered costs or lost profits.[81]

Generally, consumers, particularly Centrex customers, are unaware either that they have committed to extended term service arrangements or that they are subject to substantial penalties for service termination prior to the end of their service terms. Customers that were actually advised of their potential termination liability were generally willing to enter into extended term service arrangements in order to secure discounted rates because the incumbent LEC with whom they were contracting for service was the sole service provider in the market. When there was only one source of supply, accepting a five, seven or even ten year term from that sole source of supply in exchange for a price concession made good business sense because the customer had no choice but to take service from that sole source supplier. The value calculus obviously changes dramatically when alternative sources of supply become available. A rational business person obviously would not assume tens or hundreds of thousands of dollars in potential termination liability to secure a price discount that it could obtain from a competitive provider without such a commitment.

Draconian termination penalties tolerable in a market without competitive alternatives become abusive in a market in which customers have service options.[82] What was once a forgivable

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[81] Once common in the interexchange industry, such 100 percent "take-or-pay" arrangements are now the exception, rather than the rule. Competition has rendered such onerous termination penalties a very difficult sell by and among interexchange carriers.

[82] *See, e.g.,* Expanded Interconnection with Local Telephone Company Facilities (Memorandum Opinion and Order), 7 Fcc Rcd. 7369, ¶ 201 (1992), *recon.* 8 FCC Rcd. 127 (1992), *further recon.* 8 FCC Rcd. 7341 (1993), *vacated in part and remanded sub nom.* Bell Atlantic v. FCC, 24 F.3d 1441 (D.C.Cir. 1994), *on remand* 9 FCC Rcd. 9154 (1994) ("The existence of certain long-term access

"no-harm-no-foul" circumstance, now blocks customers from realizing the benefits of competition and denies new market entrants a fair opportunity to compete.[83] Onerous "take-or-pay" provisions held over from monopoly times constitute the very types of economic and operational barriers to entry Congress directed be, and the Commission committed to, remove in order to ensure that "competition will supplant monopolies."[84]

TRA submits that onerous termination penalties which arose in a monopoly environment constitute unreasonable limitations on resale. It is unlawful under Section 251(c)(4) for an incumbent LEC to "impose unreasonable or discriminatory conditions or limitations on the resale of . . . telecommunications services." A limitation on resale can take one of two forms. The first is a restriction imposed on a service offering which directly or indirectly prevents the resale of that offering. The second serves to restrict the universe of potential customers to which a resold service offering can be provided. Draconian "take-or-pay" termination penalties wall off segments of the user population from resale carriers. As the Commission has properly concluded, an

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arrangements also raises potential anticompetitive concerns since they tend to "lock up" the access market, and prevent customers from obtaining the benefits of the new, more competitive interstate access environment.").

[83] *See, e.g.,* Commission Approval of Fresh Look Notification, Case No. 97-717-TP-UNC, ¶ 5 (Ohio PUC July 17, 1997) ("Our primary motivation in adopting fresh look has been and continues to be our desire to spur the development of a competitive market in Ohio. Fresh look is intended to provide an incentive for new entrants to invest in a market which would otherwise be very difficult to enter given that the incumbent telephone company holds 100 percent of the market share, and, in light of the fact that *many of the most lucrative customers are locked into long-term* contracts. Fresh look is also intended to give end user customers the opportunity to take advantage of competitive alternatives at the very inception of competition." (emphasis added)).

[84] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶¶ 10 - 21.

incumbent LEC can violate Section 251(c)(4) by preventing resellers from competing for a particular universe of potential customers, thereby impairing the use of resale as a market entry vehicle.[85]

With respect to volume and term offerings of xDSL-based services, TRA submits that Bell Atlantic is also restricting resale, this time in much the same manner as BellSouth attempted to do in refusing to make CSAs available for resale pursuant to Section 251(c)(4). As the Commission declared in finding that BellSouth had failed to satisfy the resale requirement of the competitive checklist, "any service sold to end users is a retail service, and thus is subject to the wholesale discount requirement, even if it is already priced at a discount off the price of another retail service."[86] By declining to make volume and term offerings of xDSL-based services available for resale pursuant to Section 251(c)(4), Bell Atlantic is creating a general exemption from the wholesale requirement and the Commission has held that the "language [of Section 251(c)(4)] makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings."[87] Such an exception reflects "an attempt by . . . [Bell Atlantic] to preserve . . . [its] market position," impeding, as it does, competititon for an identified universe of consumers,

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[85] Application of BellSouth Corporation, *et al.* Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina (Memorandum Opinion and Order), 13 FCC Rcd. 539, ¶ 224 (1997), *aff'd sub. nom.* BellSouth Corporation v. FCC, 162 F.3d 678 (D.C.Cir. 1998); Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 6245, ¶ 69 (1998), *recon. pending.*

[86] Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 6245 at ¶ 65.

[87] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 948.

thereby "impair[ing] the use of resale as a vehicle for competitors to enter . . . [Bell Atlantic's] markets."[88]

D. Grant of the Bell Atlantic Application Would Not be Consistent With the Public Interest, Convenience and Necessity

The final evaluative task assigned to the Commission under Section 272(d)(3) is the determination of whether grant of the in-region, interLATA authorization sought by Bell Atlantic would be "consistent with the public interest, convenience, and necessity.[89] The public interest standard is a necessarily broad test incorporating a host of considerations. As the Commission has noted, "[c]ourts have long held that the Commission has broad discretion in undertaking . . . public interest analyses."[90] Indeed, "section 271 grants the Commission broad discretion to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region, interLATA market is consistent with the public interest."[91]

It is TRA's strongly-held belief that the public interest would not be served by authorizing Bell Atlantic to originate interLATA service within the State of New York until such time as the large majority of consumers, residential and business, in at least the larger metropolitan areas within the State,are able to select among two or more established facilities-based providers of

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88 Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 6245 at ¶ 68.

89 47 U.S.C. § 271(d)(3)(C).

90 Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543 at ¶ 384.

91 Id. at ¶ 383.

local exchange/exchange access service and interstate switched access charges have been reduced to reflect the economic cost of originating and terminating long distance traffic. By established facilities-based providers, TRA is referring to competitive local exchange carriers that are, and have been for some modicum of time, operational and are providing dial tone and other local services to a significant number of customers. A critical mass of customers is an essential element because a provider's ability to attract customers is a demonstration of its and its service's operational viability, which in turn would confirm Bell Atlantic's compliance with the Telecommunications Act's mandate that services and facilities provided to a new market entrant must be at least of equal quality to that which Bell Atlantic provides to itself. Market share, while not a perfect indicator, is also a useful gauge of the viability of competition in a market.[92] As the Commission has recently noted:

> The most probative evidence that all entry strategies are available would be that new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a variety of arrangements (that is, through resale, unbundled elements, interconnection with the incumbent's network, or some combination thereof), in different geographic regions (urban, suburban and rural) in the relevant state, and at different scales of operation (small and large).[93]

As monopoly or near monopoly providers of local exchange/exchange access service, Bell Atlantic retains the ability to (i) hinder competitive entry into local markets; (ii) undermine the competitive viability of new entrants into the local market; and (iii) adversely impact existing providers of interLATA service. Bell Atlantic will retain the ability to impede local, and diminish

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92 *See, e.g.,* United States v. Grinnell Corp., 384 U.S. 563, 571 (1966).

93 Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543 at ¶ 391.

long distance, competition so long as it retains control of local "bottleneck" facilities. This ability to act anticompetitively will diminish only when competitive providers of local exchange/exchange access service who are not dependent upon Bell Atlantic network services establish a solid competitive foothold, thereby eroding the local "bottleneck." Until Bell Atlantic's control of "bottleneck" facilities no longer encompasses the larger part of the population of a State, authorizing it to originate interLATA service within that State would not only not serve, but would be directly contrary to, the public interest. Such a premature action would deny the residents of the State not only the potential benefits of local exchange/exchange access competition, but reduce the existing benefits to those consumers of long distance competition.

The telephony provisions of the 1996 Act are designed, among other things, to open the monopoly local exchange/exchange access markets to competitive entry, eliminating "not only statutory and regulatory impediments to competition, but economic and operational impediments as well."[94] It belabors the obvious, however, to state that an order of magnitude difference exists between theoretically "contestable" and actually "contested" markets. While competitive potential may ultimately evolve into actual competition significant enough to discipline Bell Atlantic's market power, the lag in time before competition actually emerges may, and likely will, be substantial. And this lag in time will be exacerbated by Bell Atlatnic's resistance to competitive entry and the competitive provision of local exchange and exchange access service. As succinctly put by the Commission:

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[94] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 3.

> We recognize that the transformation from monopoly to fully competitive markets will not take place overnight. We also realize that the steps taken thus far will not result in the immediate arrival of fully-effective competition. Accordingly, the Commission and state regulators must continue to ensure against any anticompetitive abuse of residual monopoly power, and to protect consumers from the unfettered exercise of that power.[95]

As noted previously, monopolists do not readily relinquish market power. As the Commission has recognized, "b]ecause an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market."[96] Bell Atlantic can erect a variety of economic and operational barriers to competitive entry into, and competitive survival in, the local market. History teaches that an entrenched carrier will actively seek as a profit maximizing strategy to forestall competition by interposing these barriers. TRA submits that Bell Atlantic's market conduct will be adequately disciplined only when local dial tone can be obtained from other facilities-based providers with proven competitive capabilities, and that the only incentive strong enough to motivate Bell Atlantic to permit such facilities-based competitive entry is its desire to provide in-region, interLATA services.

As the Commission has recognized, introducing competition into the local exchange/exchange access market is key to realization of the Congressional goal of "opening all

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[95] Ameritech Operating Companies: Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region (Memorandum Opinion and Order), 11 FCC Rcd. 14028, ¶ 130 (1996).

[96] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 10.

telecommunications markets to competition."[97] Infusion of competition into this "monopoly bottleneck stronghold" was intended by Congress "to pave the way for enhanced competition in *all* telecommunications markets."[98] As the Commission explained, "[c]ompetition in local exchange and exchange access markets is desirable, not only because of the social and economic benefits competition will bring to consumers of *local* services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition."[99]

The sequence, hence, is critical to furtherance of the public interest. First, given that "incumbent LECs have no economic incentive, *independent of the incentives set forth in sections 271 and 274 of the 1996 Act,* to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services,"[100] local exchange/exchange access competition will not emerge, or will not emerge as quickly, if entry into the in-region, interLATA market is authorized prematurely. Thus, in order to secure for the public the benefits of local competition, grant of in-region, interLATA authority must follow competitive entry into the local exchange/exchange access market. Only after the benefits to be derived from such competitive entry have been secured should the focus shift to "promoting greater competition in the long distance

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97 Conference Report at 113.

98 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 4 (emphasis in original).

99 Id. (emphasis in original).

100 Id. at ¶ 55 (emphasis added).

market."[101] As the Commission has explained, local exchange/exchange access competition will "pave the way for enhanced competition in all telecommunications markets."[102] As set forth by the Commission, the proper sequence is:

> Under section 251, incumbent local exchange carriers . . ., including the Bell Operating Companies . . ., are mandated to take several steps to open their networks to competition . . . Under Section 271, *once the BOCs have taken the necessary steps,* they are allowed to offer long distance service in areas where they provide local telephone service.[103]

In the event, however, that it grants Bell Atlantic the in-region, interLATA authority it seeks here, TRA submits that the Commission must be vigilant in order to ensure not only that such action does not hinder local exchange competition, but that it does not negatively impact the long distance market. Certainly, the Commission has in place various structural, transactional and non-discrimination, as well as accounting, safeguards designed to guard against BOC abuse of market power once entry into the in-region, interLATA market is authorized.[104] These safeguards, as the Commission has recognized, are, however, "effective only to the extent enforced."[105] TRA thus urges the Commission to be particularly vigilant in overseeing the various pricing, bundling and marketing stratagems in which Bell Atlantic might engage once freed to enter the in-region,

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101 Id. (emphasis in original).

102 Id. (emphasis in original).

103 Id. (emphasis in original).

104 47 C.F.R. §§ 53.1, *et seq.*

105 Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, 12 FCC Rcd. 19756, ¶ 117 (1997).

interLATA market. As the Commission has recognized, Bell Atlantic could price in a predatory manner either by raising access charges or by reducing rates for interLATA service to levels close to or below amounts charged for access.[106] Bell Atlantic could abuse it market position through promotional discounts or service bundling. Bell Atlantic could even exploit its single state origination to gain an advantage over competitors subject to the Commission's rate integration mandates. If the Commission opts to allow a carrier possessed of substantial market power to enter an adjacent market in which that market power can be leveraged, it is incumbent upon the Commission to ensure that such abuses do not occur.

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[106] Id. at ¶ 127.

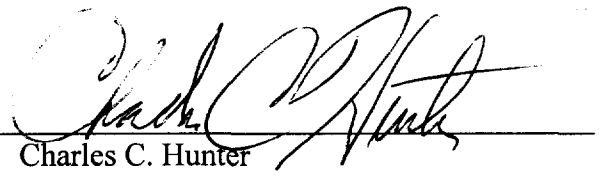
III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to deny the Application of Application of New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. under Section 271(d) of the Communications Act, as amended by Section 151 of the Telecommunications Act to provide interLATA service within the "in-region State" of New York. As demonstrated by TRA above, Bell Atlantic has . . .

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: 

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CERTIFICATE OF SERVICE

I, Charles C. Hunter, do hereby certify that a true and correct copy of the foregoing document has been served by First Class Mail, postage paid, on the individuals listed below, on this 19th day of October, 1999.

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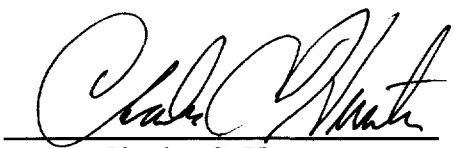

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